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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In the Matter of )  
 )  
Billed Party Preference ) CC Docket No. 92-77  
for 0+ InterLATA Calls )

JOINT COMMENTS OF  
CLEARTEL COMMUNICATIONS, INC. AND CALL AMERICA

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## SUMMARY

Cleartel and Call America vigorously oppose a system of billed party preference ("BPP") for 0+ and 0- interLATA calls. BPP is inherently anticompetitive. The growth of a competitive industry -- that is still relatively young and maturing -- should not be snuffed out by BPP. Under a BPP system, small regional IXCs will be denied a continuing viable role in the competitive operator services market, and a 0+ bottleneck will be returned to the LECs. BPP will damage the U.S. economy by causing dislocation in interexchange carrier, competitive pay telephone and related equipment manufacturing markets, eliminating many thousands of jobs and limiting small business opportunity and growth. BPP will nullify the value of call aggregators' significant investments in "smart" telecommunications equipment and technology, and destroy incentives for further equipment innovation, while ensuring a windfall to dominant local exchange carriers that will gain significant revenue streams from charges for BPP.

BPP is an overbroad solution to a limited problem, and is wholly unnecessary. The Congressionally-mandated rules implementing the Telephone Operator Consumer Services Improvement Act of 1990 require unblocked access and carrier choice for consumers. Consumers are exercising that choice by dialing access codes.

BPP still has numerous, unresolved technical drawbacks and remains an untested technology that will primarily benefit the interests of dominant local exchange carriers. Its high costs, all of which have yet to be quantified by the Commission or the industry, are unjustified given the marginal benefits it would offer for only a fraction of all 0 dialed calls. The Commission has lower cost, pro-competitive alternatives to BPP which can be pursued right now, in stark contrast to years the Commission will have to wait for full BPP implementation, and for the resolution of the legal appeals and reconsiderations that would inevitably follow a Commission decision adopting BPP. Thus, to the extent that rate concerns are driving the Commission's consideration of BPP, the Commission has the lower cost alternative of establishing a safe harbor, reasonable rate range to which all IXCs would be subject, unless they cost-justified a different rate to the Commission.

As Cleartel and Call America show in their comments, based on the Commission's own standard for judging the merits of BPP -- that "[w]e will mandate BPP only if we conclude that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly measures" -- the Commission should reject BPP and terminate this proceeding. If the Commission nonetheless adopts BPP, it must initiate further rulemakings in which fair BPP implementation procedures are adopted, including full balloting and fourteen-digit screening, in order to reduce the

anticompetitive impact of BPP on small, regional IXCs to the maximum extent possible.

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CLEARTEL COMMUNICATIONS, INC. AND CALL AMERICA**

Cleartel Communications, Inc. and Call America ("Cleartel/Call America"), by their undersigned counsel, hereby submit their comments on the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced billed party preference ("BPP") proceeding.<sup>1/</sup> As detailed herein, Cleartel/Call America submit that BPP will not further the public interest and should not be adopted.

## I. INTRODUCTION AND STATEMENT OF INTEREST

Cleartel/Call America are regional interexchange carriers ("IXCs") which provide competitive long distance services including 0 dialed operator services at a variety of call aggregator locations.<sup>2/</sup> As competitive providers of interstate

1/ FCC 94-117 (released June 6, 1994).

2/ Cleartel, based in Washington, D.C., and Call America, with various office locations in California's Central Coast region, are not affiliated with each other in any way. They share similar concerns in this proceeding and file their comments jointly to conserve their resources and those of the Commission. Call America submitted a brief letter to the Commission dated July 20, 1994, to express its preliminary views in opposition to BPP. Call America joins in these comments with Cleartel to support and amplify the arguments in its letter.

operator services, Cleartel/Call America have a substantial interest in this proceeding because BPP would fundamentally alter routing of 0 dialed calls, impose substantial implementation costs on service providers and end users, and restrict competitive opportunities for small regional IXCs in the operator services market.

Cleartel/Call America submit that the Commission's tentative conclusion that a system of BPP for all 0-dialed interLATA calls would further the public interest is flawed and should be reversed. The well-founded arguments against BPP put forth two years ago in this proceeding are even more compelling today. BPP should be rejected because:

- BPP is inherently anticompetitive. Under a BPP system, small regional IXCs will be denied a continuing viable role in the competitive operator services market, and a 0+ bottleneck will be returned to the LECs.
- BPP is unnecessary; the Commission's rules mandate unblocked access and carrier choice for consumers, and consumers are exercising that choice by dialing access codes.
- BPP still has numerous technical drawbacks, and its high costs are unjustified given the marginal benefits it would offer for only a fraction of all 0 dialed calls.
- BPP will damage the U.S. economy by eliminating many thousands of jobs and limiting small business opportunity and growth in the interstate operator services market.
- BPP will nullify the value of call aggregators' significant investments in "smart" telecommunications equipment and technology, and destroy incentives for further equipment innovation.
- The Commission has lower cost, pro-competitive alternatives to BPP which can be pursued right now, in

stark contrast to years the Commission will have to wait for full BPP implementation.

These reasons compel a reversal of the Commission's tentative conclusion. Under the totality of the circumstances, BPP will not advance the public interest.

**II. THE COMMISSION'S COST/BENEFIT ANALYSIS IS PRELIMINARY AT BEST, AND APPEARS TO UNDERSTATE THE COSTS OF BPP SUBSTANTIALLY**

As the Commission concedes in the FNPRM, the data upon which the Commission's BPP cost/benefit analysis is dated and incomplete. Thus, the Commission's cost/benefit calculations must necessarily be viewed as preliminary at best, and insufficient to support a decision mandating BPP.

The full range of cost categories inherent in BPP implementation do not appear to be included in the Commission's cost analysis. For example, the substantial cost of stranded call aggregator investment in telephone equipment that will be rendered inoperable and useless under BPP should be factored in as a cost of BPP.

Nor does the Commission's analysis quantify LEC overhead that could be included in the total BPP figure -- potentially adding millions more to the cost of BPP.<sup>3/</sup> The Commission also did not include the costs of 14-digit screening -- which is a prerequisite of any mandated BPP system in order to preserve a variety of calling card options for carriers and to preserve a

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<sup>3/</sup> See FNPRM at ¶ 27. ("Some LECs would also seek to apply overhead loading factors to these costs.")



viable role for commercial credit card providers. The FNPRM also fails to recognize IXC implementation costs associated with balloting of end users -- another necessary element of any BPP system to preserve fair competitive opportunities for all IXCs.

The Commission has conceded that BPP is an expensive technology whose costs will be spread across the entire industry, even though BPP would be of marginal benefit for only a fraction of calls. Indeed, the single marginal benefit BPP offers over current dialing arrangements is the elimination of dialing access codes to reach a particular IXC at telephones not presubscribed to that IXC. It is critical to note, however, that BPP's costs will likely drive consumer rates upward for all calls because carriers will be forced to pass on their BPP implementation costs to end users. Moreover, as the Commission concedes, "there is no guarantee that [IXCs] would promote 0+ calling in a BPP environment."<sup>4/</sup> Some IXCs would opt out of BPP in order to promote alternative to 0 dialing (e.g., debit cards) particularly in order to avoid factoring the costs of BPP charges paid to LECs into their end user rates.

The only way that the purported benefits of BPP can be weighed properly is if all of the costs of the system are fully disclosed and included in the calculation. The millions of dollars in cost elements left out of the FNPRM's cost/benefit analysis cast substantial doubt on the Commission's analysis and

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<sup>4/</sup> FNPRM at n.30.

suggest that if all of the relevant cost elements were included, the total costs of BPP would clearly outweigh its purported benefits.

**III. BILLED PARTY PREFERENCE WILL DRAMATICALLY REDUCE OPERATOR SERVICES COMPETITION AND DAMAGE THE U.S. ECONOMY BY ELIMINATING JOBS AND SMALL BUSINESS GROWTH OPPORTUNITIES**

Cleartel/Call America believe that the Commission's tentative conclusion that BPP should not unduly damage competitive opportunities for smaller, regional IXC's in the interstate operator services market is unrealistic.<sup>5/</sup> A mandatory BPP system would drastically reduce competition because the largest IXC's with nationwide origination will have significant marketing advantages over smaller carriers lacking this capability.

As a result, BPP will largely transfer the 1+ market share of the major IXC's directly into the 0+ market leaving little, if any, market share for regional IXC's. Even if smaller carriers enter into secondary carrier arrangements with IXC's that have the origination capabilities they lack, the smaller IXC's will still be at a competitive disadvantage by the forced reliance on another IXC's services, especially since the secondary IXC may be a competitor to the primary carrier. The dependence of smaller carriers on these partnering arrangements will inflict substantial cost of service increases on them vis-a-vis their large IXC competitors. This will only exacerbate the inherent

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<sup>5/</sup> See FNPRM at ¶ 32.

cost disadvantages under which smaller carriers operate as a result of LEC access charge structures.

Thus, without doubt, BPP will make it much harder for small regional IXC's to compete for customers. Many such IXC's will exit the operator services marketplace given the added marketing burdens and implementation costs of BPP. This market retreat will fundamentally damage the U.S. economy by eliminating jobs, and denying small business growth opportunities in 0 dialed calling services.

The negative business impact of BPP will also extend to the many equipment vendors that support the competitive operator services market. Since BPP would radically shift intelligence back into the network, "smart" equipment vendors will immediately lose market share and their products will be rendered largely irrelevant.

The Commission, however, suggests that pay telephone equipment vendors could still offer technological innovations such as voice messaging, but notes that BPP would have to be bypassed by requiring end users to dial around it (e.g., through use of the # key). This proposal is no solution at all; it demonstrates that BPP cannot contribute to infrastructure improvements that enhance consumer convenience on both the equipment and network side. Rather, it supports the LEC's' deployment of such features in the network, and encumbers the ability of "smart" equipment vendors to market competing products. Thus, the return to LEC network routing of 0 dialed

calls under BPP will effectively eliminate incentives for future equipment innovation. This loss will also reduce the workforce needs of the competitive industry.

These damaging economic effects can and should be avoided. BPP is an overbroad, highly expensive solution to a limited issue. The growth of a competitive industry -- that is still relatively young and maturing -- served by carriers and equipment vendors of various sizes should not suddenly be snuffed out by BPP. To the extent that the Commission believes that refinements are necessary to the current market and applicable regulations, the Commission has lower-cost alternatives to solve any existing problems in a focused manner -- as discussed below in Section VI -- without eliminating an entire market segment, and saddling the remaining industry with high implementation costs that can only force consumer rates upward without providing any material benefits over the current system.

#### **IV. THE FNPRM GLOSSES OVER THE UNRESOLVED TECHNICAL DRAWBACKS OF BPP**

The FNPRM makes light of well-documented technical drawbacks of BPP that remain unresolved. It is clear that successful implementation of BPP would require carefully orchestrated technical upgrades by LECs and OSPs. The ability of all carriers to deploy those upgrades is uncertain, let alone in a coordinated manner. Smaller carriers will be particularly hard hit by these requirements, and may opt out of the 0 market as a result of the high costs of these changes.

BPP could degrade service quality and add extra processing time to many calls. As numerous parties documented in earlier stages of this proceeding, for many calls, BPP could require end users to provide billing information twice -- once to the LEC and then to the OSP -- which will be frustrating to the caller. For example, as stated in the FNPRM, if an OSP could not receive OSS7 billing data from the LEC on certain calls, the OSP would have to request billing information from the caller again.<sup>6/</sup>

Notwithstanding the relegation of this issue to a parenthetical in the FNPRM, it is certainly not a foregone conclusion that all OSPs have deployed OSS7, or are even prepared to do so within a few years. If OSPs lack this capability, callers will suffer inconvenience and confusion, and processing time will be added to call completion. Such results are not synonymous with technological "progress" and market-driven infrastructure enrichment.

**V. BPP IS CONTRARY TO OTHER FEDERAL AND STATE COMPETITIVE POLICIES FOR THE LONG DISTANCE AND LOCAL EXCHANGE MARKETS, BECAUSE IT WILL RESULT IN AN ANTICOMPETITIVE LEC BOTTLENECK FOR 0+ and 0- SERVICES**

If the Commission mandates BPP, it is likely that future competitors to dominant LECs in local exchange markets will create pressure to abolish BPP in the long term because BPP is an inherently anticompetitive policy. To mandate BPP for interstate operator services -- thereby requiring all other carriers to pay

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<sup>6/</sup> See FNPRM at ¶ 6.

charges to the LEC for routing 0 dialed traffic through LEC-controlled facilities -- will give the dominant LEC in each market an unfair windfall. The guaranteed revenue source that the LEC will receive under BPP could be used by the LEC to cross-subsidize its unregulated, competitive activities. This issue should be of utmost concern to all competitive IXCs -- particularly given the clarion call of the Regional Bell Operating Companies ("RBOCs") in multiple forums for entry into the interLATA long distance market. Moreover, potential competitors to LECs in the local exchange services market should be concerned about the stranglehold LECs will retain on call routing as a result of BPP, and the wholesale control they exercise over critical billing mechanisms such as the LIDBs.

The FNPRM's policy analysis of BPP avoids these critical issues and does not explore in any detail the negative impact that a LEC bottleneck for 0 dialed calls would have on opportunities for competitive local access providers in routing this traffic. Moreover, even if two years ago the issue of RBOC entry into interLATA long distance services seemed unclear, there can be no doubt anymore of the intentions of the RBOCs to enter this marketplace in full force.

In the face of these competitive developments underway in the local and long distance markets and the availability of viable regulatory alternatives to BPP, it is difficult to understand the policy justification for Commission's tentative decision. BPP would clearly and anticompetitively hold other

carriers hostage to LEC routing, and give dominant LECs a comfortable revenue stream to leverage in competitive markets. The added charges levied on IXC's as a result of BPP effectively will amount to another "access charge" -- in addition to the substantial access charges that IXC's already pay to the LECs, the levels of which present the single biggest obstacle to more competitive, lower prices for IXC services.<sup>7/</sup>

Moreover, the Commission's allusions to the infrastructure enrichment capability of BPP only reinforce the sense of an unearned LEC windfall. Such statements smack of favoritism and unfairness because, of necessity, they largely assume that it is only the LECs that should have the opportunity to produce such enhancement, funded by BPP charges to be levied on other carriers (including their competitors), and passed on ultimately to end users.<sup>8/</sup> This view wholly leaves aside the potential for new service providers competing in the local market and equipment vendors to participate in this growth effort. For example, the Commission seems to believe that LEC development of CLASS-like services for the 0 dialing market is a desirable infrastructure improvement, but it is wholly unclear that all of the major LECs are even interested in offering these services, or that BPP is a prerequisite for such offerings. In making such judgments,

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<sup>7/</sup> Indeed, MCI has indicated that its entry into the competitive access market is based substantially on its desire to price its IXC services better for consumers through savings on big access charge payments to LECs.

<sup>8/</sup> See, e.g., FNPRM at ¶ 17.

the Commission has not acknowledged that such new offerings would create additional LEC revenue streams made possible by BPP charges paid by others.

At a minimum, the Commission should consider whether there will be fair opportunity for other service providers to offer alternatives to these LEC "enhancements." Under BPP, it may be extremely difficult for other carriers to develop competitive alternatives to them, and LECs should not be granted the right through BPP to establish an exclusive foothold. The Commission should take a much closer look at the competitive implications of its assumption that BPP will enrich the telecommunications infrastructure, and ask whether other entities (e.g., competing carriers and equipment vendors) will have a real competitive opportunity under BPP to contribute to that goal.

In short, in tentatively concluding that BPP should be mandated, the Commission has not made critical competitive policy connections with respect to either the local exchange market or the long distance market. Rather, the Commission appears to have considered BPP in a vacuum, virtually as an end in itself. The issues in this proceeding must be considered in tandem with Commission's vision for increasing competitive opportunities in the local exchange market, and for preserving robust competition in the long distance services rather than sanctioning an oligopoly market structure sure to result from BPP. From that vantage point, BPP is clearly an inherently anticompetitive proposal and should not be adopted.



## **VI. THE COMMISSION HAS LOWER COST, VIABLE ALTERNATIVES TO BPP**

The Commission's tentative determination to adopt BPP as a way to address pending regulatory issues in the operator services industry is an expensive, overbroad solution to a limited problem. To the extent that dissatisfaction with operator services rates is driving the Commission's tentative decision, the Commission has lower cost alternatives to address rate concerns directly and quickly -- without having to wait the years it would take to complete BPP's technical implementation, and resolve BPP implementation rulemakings, tariff review, and reconsiderations, as well as lengthy court appeals that will challenge the Commission to demonstrate that its BPP decisions are lawful.

If the Commission is concerned about rate levels, Cleartel/Call America urge the Commission to establish a range of rates applicable to all carriers that would serve as a presumptively reasonable, safe harbor for interstate operator services. The upper end of the range could appropriately reflect the higher costs of smaller IXCs while ensuring that the rate charged the end user is just and reasonable and does not transfer an excessive profit to a carrier.

The Commission could build into this approach the option for a carrier to exceed the range provided that the carrier affirmatively demonstrated higher costs (excluding any commissions IXCs pay to call aggregators) to justify the higher rate. Thus, the reasonable range of rates would not constitute a

rate prescription by the Commission, because carriers could file cost justification information and argue for the ability to charge a higher rate.

Use of a reasonable range of rates (allowing for cost justification in a minority of cases) is a viable alternative to imposing the huge expense and technical complexity of BPP on the entire industry. In the long run, this process would be less resource-intensive for the Commission than the relative volume of work which BPP rulemakings, tariff reviews and legal appeals would create for the agency. Moreover, this rate limitation approach would cost the industry far less money, and would not lock small companies out of the market altogether.

Establishment of a reasonable rate range also would be consistent with Congressional intent in enacting TOCSIA. An exercise of rate regulation authority was expressly provided for in TOCSIA if the Commission determines that marketplace forces are not securing just and reasonable rates for operator services.<sup>2/</sup> The Commission should not summarily reject this approach based on the possibility that a minority of carriers would file cost justification showings. Analysis of such filings should not require substantial Commission resources given that the Commission already performs this very type of analysis for certain dominant local exchange carrier filings, and could

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<sup>2/</sup> See 47 U.S.C. § 226(h)(4).

institute streamlined review procedures for competitive IXCs cost justification filings to expedite their resolution.

At bottom, BPP is also unnecessary because the Commission's rules implementing TOCSIA effectively address the other apparent concerns that have motivated the Commission's consideration of BPP to this point. If combined with a Commission-established range of rates presumed reasonable for interstate operator services, Cleartel/Call America submit that any lingering basis the Commission may have had for continuing its consideration of BPP falls away. The Commission's rules ensure that end users have carrier choice at virtually all aggregator locations through 10XXX, 800, and 950 access codes. In the few locations where 10XXX has not been unblocked, other access methods (800 and 950) are available, as mandated by the Commission's rules. By 1997 -- the Commission's estimated timetable for BPP if it is adopted -- 10XXX will be fully unblocked at all locations. It is highly ironic that in the same year in which Congressionally-mandated TOCSIA implementation will be completed, the Commission independently believes that the structure of operator services regulation should be changed again -- to BPP.

The Commission clearly stated in the FNPRM that it "would mandate BPP only if we conclude that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly

measures."<sup>10/</sup> Lower cost alternatives to BPP do exist, and the rules implementing TOCSIA already provide carrier choice and other consumer benefits, meeting the underlying goals of BPP. Moreover, the Commission has the authority to issue refinements to these regulations (such as establishing a reasonable range of rates). Therefore, Cleartel/Call America submit that -- when the facts are applied to the Commission's own "test" for judging this item -- the Commission should not mandate BPP.

**VII. IF THE COMMISSION NEVERTHELESS ADOPTS BPP, IT MUST, AT A MINIMUM, MANDATE FAIR IMPLEMENTATION PROCEDURES, INCLUDING FOURTEEN-DIGIT SCREENING AND FULL BALLOTING, TO PRESERVE COMPETITIVE OPPORTUNITIES IN THE MARKET**

If the Commission adopts BPP -- despite the numerous reasons arguing against that outcome -- the Commission must conduct further rulemaking proceedings to examine its technical implementation and to preserve competitive opportunity in the operator services market. At a minimum, the Commission should conduct separate 0+ balloting to allow all carriers a fair chance to serve end users. Also, any BPP system must permit carriers lacking nationwide origination to control the selection of a secondary carrier based upon the carrier's needs and cost considerations. The secondary carrier's role should be viewed as part of the service offering of the primary carrier. Smaller carriers should be afforded the flexibility to choose a variety of secondary carriers in different geographic areas, based on

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<sup>10/</sup> FNPRM at ¶ 2.

their unique requirements. Cleartel/Call America also believe that it is competitively important to allow end users to designate different OSPs for international and domestic calling.

The Commission also must mandate 14-digit screening if BPP is adopted. The Commission correctly concluded in the FNPRM that it would not be in the public interest to adopt a BPP design that gives LECs, but not IXCs, the ability to offer line number calling cards.<sup>11/</sup> Also, the Commission must include commercial credit cards in a BPP system to preserve the consumer's option to use them as a payment mechanism for calls.

These issues are but a few of the concerns that would have to be explored in BPP implementation FCC rulemakings. Moreover, the effect of a Commission BPP mandate on state regulation and jurisdiction must be addressed, as NARUC has recently stated.<sup>12/</sup> Given BPP's disruptive impact on current regulations and the structure of the competitive operator services industry, the list of such issues is likely to grow much longer.

#### **VIII. CONCLUSION**

As detailed above, BPP is an expensive, impractical technological concept that time has passed by. Mandating BPP is wholly incompatible with maintaining a high level of competition in the interstate operator services marketplace in which small businesses have a role. Moreover, BPP conflicts with competitive

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<sup>11/</sup> See FNPRM at ¶ 73.

<sup>12/</sup> See Communications Daily, July 29, 1994, at 3.

policies in the local exchange and long distance markets. If adopted, BPP will damage the U.S. economy by disrupting established businesses and reducing jobs in the competitive sector. Substantial equipment investments by call aggregators will be stranded, and incentives for equipment innovation will be lost.


To the extent that the Commission believes that further regulatory change is required to protect the consumer interest in receiving high quality operator services at just and reasonable rates, the Commission has lower-cost alternatives to BPP -- such as authorizing a presumptively reasonable range of rates for services. The Commission can pursue lower cost alternatives to BPP right now, without the significant lag time that implementation would require -- and the legal challenges that will ensue -- if the Commission adopts BPP.

Cleartel/Call America firmly believe that if the Commission nevertheless mandates BPP, it is inevitable that the LEC 0 dialing bottleneck created by BPP will have to be undone eventually because BPP conflicts so strikingly with competitive forces at work in the local exchange and long distance markets. Until that happens, however, Cleartel/Call America submit that, at a minimum, any mandated BPP system must maximize the opportunities for carriers of all sizes to participate in the operator services market through requirements such as 14-digit screening and fair balloting procedures.

Cleartel/Call America, however, implore the Commission to make a proper decision in this proceeding the first time around. Accordingly, the Commission should not adopt BPP.

Respectfully submitted,

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